

# **CITY OF BEAVERTON, OREGON**



## ***INVITATION TO BID RENTAL OF CONSTRUCTION RELATED EQUIPMENT REQUIREMENTS CONTRACT***

**DATE & TIME DUE: JUNE 20, 2006 @ 2:00 PM**

**Mayor**  
Rob Drake

### **City Councilors**

Cathy Stanton

Betty Bode

Catherine Arnold

Bruce Dalrymple

Dennis Doyle

**SUBMIT PROPOSAL TO:**  
City of Beaverton  
Purchasing Division  
4755 SW Griffith Drive  
Beaverton, OR 97005  
503-526-2228

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CITY OF BEAVERTON  
INVITATION TO BID  
RENTAL OF CONSTRUCTION RELATED EQUIPMENT  
REQUIREMENTS CONTRACT

City of Beaverton is requesting sealed bids for contract(s) for the rental of construction related equipment for the Department of Public Works/Operations Division.

Bids will be received by Terry Muralt, CPPB, Purchasing Agent no later than 2:00 PM on June 20, 2006 at City Hall, 4755 SW Griffith Drive, Beaverton, OR 97005, Finance Conference Room. Bids will be opened immediately thereafter and publicly read aloud. Bids received after the designated time and date will be returned unopened.

Bid packets may be downloaded from [www.beavertonoregon.gov](http://www.beavertonoregon.gov) or may be obtained at the address listed above or by calling the Bid Line at 503-526-2228. All questions concerning the bid process or specifications should be directed to Terry Muralt, CPPB, Purchasing Agent, at 503-526-2229.

Each bid must contain a statement as to whether they are a resident bidder as defined in ORS 279A.120(1).

Pre-qualification of bidders is not required. All bidders are required to comply with the provisions of Beaverton's Contract Review Board Policy and Oregon Revised Statutes.

The City of Beaverton may reject any or all bids not in compliance with public bidding procedures and requirements and may reject for good cause any or all bids upon a finding of the City it is in the public interest to do so;

Published: Daily Journal of Commerce  
Date: June 1, 2006

# **INSTRUCTIONS FOR OBTAINING SOLICITATION DOCUMENTS AND ADDENDUMS FROM CITY OF BEAVERTON WEB SITE**

TO: All Interested Parties

FROM: City of Beaverton, Purchasing Office

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The city of Beaverton offers certain solicitation documents for downloading from the city's Web site. If you choose to download the solicitation document, the city requires each prospective bidder or proposer downloading these documents to follow the specific requirements detailed below. If the potential bidder or proposer does not follow these requirements they risk the possibility of not receiving a complete solicitation packet and may be deemed a non-responsive bidder.

Please note that the solicitation available for download is the original document released to the public.

Bidders should also "Register" on the City's Web site in order to receive e-mail notification of "Addendums" issued for a specific bid document. To receive automatic e-mail notification of Addendums, please go to the Bid Registration System at [www.beavertonoregon.gov/bids](http://www.beavertonoregon.gov/bids). This site will allow you to register and then subscribe to the specific bid or proposal that you are downloading. Once you have subscribed for a specific bid or proposal you will receive an e-mail notification of any addendums issued for that specific bid. Upon receipt of the e-mail notification, bidders are responsible to download the document from the "Current Bid & Proposal Opportunities" site [www.beavertonoregon.gov/departments/finance/finance\\_bids.html](http://www.beavertonoregon.gov/departments/finance/finance_bids.html).

**CITY OF BEAVERTON  
INVITATION TO BID  
RENTAL OF CONSTRUCTION RELATED EQUIPMENT  
REQUIREMENTS CONTRACT**

**GENERAL INFORMATION**

This Invitation to Bid is for rental of construction related equipment for the Department of Public Works/Operations Division. The City is requesting a percentage off of the bidders standard rental rates.

Included is a listing of commonly used construction equipment with estimated annual usage for each piece of equipment. The City is not restricted to or limited by the estimated usage listed.

The actual needs of the City in terms of variety and quantity may vary from that indicated in the sample listings. Items and quantities are given for the purpose of comparing bids on a uniform basis and giving the bidder an approximate idea of usage by the City.

The initial term of the contract(s) shall be one (1) year with automatic renewals of two (2) additional one-year options to extend. The maximum duration of the contract(s) may not exceed three (3) years.

The estimated three-year expenditure for this requirements contract is \$180,000.00.

**SPECIAL INSTRUCTIONS**

**1. TIMEFRAME**

Issue Invitation to Bid Documents	June 1, 2006
Bid Opening (date & time)	June 20, 2006 @ 2:00 PM
Award Recommendation to Contract Review Board	July 10, 2006

*NOTE: The City reserves the right to modify this schedule at the City's discretion. Proper notification of changes will be made to all interested parties.*

**2. BID SUBMISSION REQUIREMENTS AND OPENING**

- A. Submit a minimum of two (one original and one copy) sets of response to this bid.
- B. To be considered each submittal shall contain the following:
  - a. Signed and Dated Certification and Contract Offer
  - b. Completed Bid Form
  - c. Listings of all available rental items and rates
- C. **Bids and all amendments must be signed and submitted no later than 2:00 PM on June 20, 2006**, to the address below. Bid must be submitted in a sealed envelope and designated with bid title. The name and address of the bidder should appear on the outside of the envelope. The outside lower left-hand corner of the envelope should have the bid title and bid opening date and time.

Bid Title  
Bid Due Date & Time  
City of Beaverton  
Terry Muralt, CPPB, Purchasing Agent  
4755 SW Griffith Drive  
PO Box 4755  
Beaverton, OR 97076

BIDDERS SHALL PUT THEIR NAME AND ADDRESS ON OUTSIDE OF ENVELOPE.

It is the bidder's responsibility to ensure that bids are received on or before the stated closing time. Bids received after the designated time and date will be returned unopened. **Facsimile bids shall not be accepted.** Bid opening shall take place at address listed above in the Finance Conference room.

The submission and signing of a bid shall indicate the intention of the contractor to adhere to the provisions described in this Invitation to Bid (ITB).

3. **EXECUTION OF BID**

Bids must be typewritten or prepared in ink. Bids shall be submitted on the "Bid Form" furnished by the City and must be signed in ink by an authorized representative of the bidder.

4. **INTERPRETATIONS AND ADDENDA**

All questions regarding this invitation to bid shall be directed to Keith Stone, Construction Manager. If necessary, interpretations or clarifications in response to such questions will be made by issuance of an "Addendum" to all prospective Proposers within a reasonable time prior to proposal closing, but in no case less than 72 hours before the proposal closing. If an addendum is necessary after that time, the City, at its discretion, can extend the closing date.

**Bidders are responsible for checking for Addendums on the City's Website. Bidders should visit the City's website and "Register" to receive email notification of any "Addendums" issued for this specific bid document. Upon receipt of the email notification bidders are responsible to download the document from the "Current Bid & Proposal Opportunities" site [www.beavertonoregon.gov/bids](http://www.beavertonoregon.gov/bids).**

Any Addendum issued, as a result of any change in the ITB, should be acknowledged on the "Certification and Contract Offer" form and submitted with bid.

**Only questions answered by formal written addenda will be binding.** Oral and other interpretations or clarifications will be without legal effect.

All other questions should be directed to Terry Muralt, CPPB, Purchasing Agent 503-526-2229.

5. **COST OF PREPARING A BID**

This ITB does not commit the City to paying any costs incurred by Bidder in the submission or presentation of a bid, or in making the necessary studies for the preparation thereof.

6. **BID VALIDITY PERIOD**

All bids received shall be valid and irrevocable for a period of sixty (60) days from the date of opening.

7. **RESIDENT BIDDER**

A resident bidder means a bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid and has a business address in this state as defined in ORS 279A.120(1).

8. **INTERGOVERNMENTAL PERMISSIVE COOPERATIVE PROCUREMENTS**

Pursuant to ORS 279A.215 and City of Beaverton procurement rules, other public agencies may purchase goods/services directly from the contractor under the terms and conditions of any contract(s) resulting from this solicitation if the Contractor agrees to extend the terms, conditions and prices of the contract(s) resulting from this solicitation to such agencies.

Each contracting agency will execute a separate contract with the successful bidder for its requirements.

Any bidder, by written notification at the time of the bid due date and time, may decline to extend the prices and terms of this bid to any, and/or all other public agencies.

Additional costs may be incurred by the successful bidder in contracting with another public agency. All demonstrable costs (shipping, etc.) may be passed on to that public agency.

9. **NON-COLLUSION**

Bidder certifies that this bid has been arrived at independently and has been submitted without collusion designed to limit independent bidding or competition.

10. **DOCUMENTS ARE PUBLIC RECORD**

All bid material submitted by bidder shall become the property of the City and a public record. Information within a proposal that proposer considers a trade secret should be segregated and clearly identified as such. City shall treat such segregated and clearly identified trade secret information as exempt from public inspection at all times, including after notice of intent to award a contract has issued, to the extent permitted in the Oregon Public Records Law (ORS 192.410 to 192.505).

11. **BUSINESS LICENSE/FEDERAL TAX ID REQUIRED**

A City of Beaverton Business License is required. Chapter 7.01.020 of the Beaverton City Code states no person shall do business within the City without a current, valid City License. No contracts shall be signed prior to the obtaining of the City of Beaverton Business License.

Upon award of proposal, contractor shall complete a W-9 form for the City.

**12. ERRORS IN BIDS**

When an error(s) is made in extending total prices, the unit bid price will govern. Bidders are cautioned to recheck their bid for possible error(s). Error(s) discovered after opening cannot be corrected and the contractor will be required to perform if their bid is accepted.

**13. REJECTION OF BIDS**

The City reserves the right to reject any bid not in substantial compliance with the bid documents, or all prescribed public bidding procedures and requirements and may reject for good cause any or all bids upon a finding of the City that it is in the public interest to do so.

**14. MINOR INFORMALITIES**

The City reserves the right to waive any and all minor informalities.

**15. FORM OF CONTRACT**

The City will issue Purchase Orders to each contractor. Attached, is a copy of the Purchase Order Standard Terms and Conditions, see Exhibit "B".

Bidder's are asked to submit the contract form, if applicable, that the City would be expected to sign for rental of construction related equipment. Contract forms submitted shall be reviewed by the City Attorney and may be negotiated with awarded bidders.

**16. AVAILABILITY OF FUNDS**

City has sufficient funds currently available and authorized for expenditure to finance costs of this Contract within City's current fiscal period; provided, however, that continuation or extension of the Contract after the end of the fiscal period in which this Contract is written is contingent upon a new appropriation for each succeeding fiscal period. If sufficient funds are not provided in future City Council-approved budgets of City (or from applicable federal, state, or other sources) to permit City in the exercise of its reasonable administrative discretion to continue this Contract, or if City abolishes the program for which benefit this Contract was executed, City may terminate this Contract without further liability by giving Contractor not less than 30 days' notice. In determining the availability of funds, City may use the annual budget adopted for it by its City Council.

**17. PRICING**

- A. Bids shall include any special handling charges.
- B. Periodically during the contract period, invoiced prices will be audited to verify supplier compliance with contract pricing.
- C. All bidders must provide a copy of the current rental price lists, relevant to this bid. The price list submitted shall be that which is in effect at the commencement of the requirements contract(s). Price lists must be clearly identified and include dates as to issuance and effectiveness.
- D. Terms and conditions specified in this ITB shall take precedence over any terms and conditions contained in the contractor's price lists submitted



**18. PRICE ADJUSTMENT**

- A. All price decreases and store specials shall be passed through in total to the City on the effective date of the price decrease.
- B. Revised Published Price Lists will be used as a means of price increases. However, all bids are to be firm for a period of one year after the bid opening date and Revised Price Lists will not be accepted by the City until after that date.
- C. All information regarding any proposed price change shall be submitted to the Contract Administrator in writing at least 30 days prior to the date the requested price increase is to go into effect. The City reserves the right to accept or reject any proposed changes in prices or discounts. If the price changes are accepted, they shall become effective 30 days after the request is approved.
- D. If price increases are necessary, the City must receive the same or better percentage discount from list as reflected in the original bid prices.
- E. The City reserves the right to determine the acceptability of price verification documentation. Increases shall apply to orders issued on or after the effective date of the increase. In the event of price increases(s), the City reserves the right to audit contractor's books and records relating to cost or pricing data.

**19. SPECIFICATIONS**

Bidders shall comply with specifications as listed.

For purposes of this Invitation to Bid a brand name is used only to describe the quality and other characteristics of a product requested. Bidders with products they feel are equal may submit those products for review by staff. The City reserves the right to determine if an "or equal" product meets the City requirements.

**20. ALTERNATES**

Alternates may be considered; however, they must, at a minimum, meet the same level of quality and performance as specified. The City reserves the right to make the final determination as to whether an alternate meets the specifications.

Bids submitted for individual items on an "equals" or "equivalent to" basis must include detailed product and/or service literature suitable for evaluation by the City. If the rental of construction related equipment or related materials bid has significant variations from the specifications of the "Known Acceptable Product" specified by the City, the City reserves the right to reject that bid item without further discussion or testing.

**21. ORDER PROCEDURES**

The contract administrator will give the supplier a list of those individuals who are authorized to place orders under this requirements contract on behalf of the City. Orders may be placed orally or in writing against the designated purchase order. The supplier shall not accept any orders placed by a person not on the list provided by the contract administrator, and the City will not be obligated to pay for any such unauthorized orders.

**22. PAYMENT**

Payment will be made upon submission of invoices on a monthly basis for all items delivered during the month.

**23. SAMPLE EQUIPMENT/USAGE**

The construction equipment listed is a sampling only of equipment the City expects to rent over the term of this requirements contract(s). The actual needs of the City in terms of variety and usage may vary from that indicated in the sample listing.

**24. USE BY OTHER PUBLIC AGENCIES**

As noted in Item 8 above, this ITB will be available to other public agencies unless otherwise indicated. If necessary, pricing to other public agencies may be adjusted to include any additional delivery costs.

**25. CONTRACT ADMINISTRATOR**

The Contract Administrator will be Keith Stone, who can be reached by phone at 503-526- 2224, or by email at kstone@ci.beaverton.or.us

**26. DELIVERY REQUIREMENTS**

Equipment to be provided at vendor location unless delivery is required by the City. Additional charges may be assessed for delivery.

If available, include a delivery rate schedule with your bid.

**27. EMERGENCY RENTALS**

Under certain situations, the City may require immediate delivery and reserves the right to rent any item covered by this contract from other sources **if** the contracted supplier is unable to supply the item in a timely manner.

**28. CONTACT PERSONS**

The contractor shall designate one or more contact person(s) responsible for this contract at the Contractor's worksite. The Contractor shall provide to the City the names, addresses and telephone numbers of such person(s) and shall keep this information current at all times.

**29. SILENCE OF SPECIFICATIONS**

The apparent silence of the ITB specifications as to any detail, or the apparent omission of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only materials and workmanship of first quality are to be used.

**30. INSURANCE REQUIREMENTS**

The following is the only insurance/indemnification requirement for this bid, there are no additional insurance requirements: The Contractor shall save harmless and indemnify the city of Beaverton, its mayor, council, department heads employees, and agents for any and all claims, damages, losses and expenses, including but not limited to, reasonable attorney's fees at trial and on appeal arising out of or resulting from performances of or failure to perform the obligations of any contract resulting from the Invitation to Bid."

## **BID EVALUATION AND AWARD**

### **1. AWARD CRITERIA**

Award will be to the lowest responsive, responsible bidder(s). The award criteria will be:

- A. Bidder's ability to meet service requirements; access to adequate inventory.
- B. Compliance with specifications

### **2. BID AWARD**

- A. The true cost of renting construction equipment includes both the rental rates and the cost of transporting the rental equipment to the job site. It is the intent of the City to award a 3-year requirements contract to each responsible bidder. The contracts will allow the Department of Public Works/Operations Division to rent equipment on an as needed basis. No vendor will be promised minimum or maximum rental orders. In renting equipment for a particular project, the Operations Division will choose the lowest rental rates on the basis of contract price plus the Operations Division estimate of the cost of transporting the rental equipment to the project site.
- B. The City reserves the right to reject any and/or all bids in whole or in part and to not award any category.
- C. The notice of intent to award shall be the City's recommendation contained in the agenda bill presented to City Council, acting as the Contract Review Board. Agendas for Council meetings are posted on the City website at [www.beavertonoregon.gov](http://www.beavertonoregon.gov).
- D. The decision by the Council to award the contract(s) shall constitute the final decision of the City to award the contract(s).

### **3. TERM OF CONTRACT**

The initial term of the contract(s) shall be one (1) year with automatic renewals of two (2) additional one-year options to extend. The maximum duration of the contract(s) may not exceed three (3) years.

## **SPECIFICATIONS**

### **1. SCOPE OF WORK**

The Department of Public Works/Operations Division frequently requires construction equipment that the City does not own for various construction, road repair/maintenance and emergency repair projects. The equipment is usually of a type that the City uses infrequently and is not cost-effective for the City to purchase.

### **2. RATES**

- A. ***Daily Rates*** - *Daily Rate is considered to be a 24-hour period from pickup of equipment to return of equipment to the contractor.*
- B. ***Weekly Rates*** - *Weekly Rate is considered to be a 7-day period from pickup or delivery of equipment to return or notification by the City that equipment is no longer required, regardless of the actual pickup date.*
- C. ***Monthly Rates*** - *Monthly Rates are considered to be a 4- week period from the date of pickup or delivery, to date of return or notification by the City that equipment is no longer required, regardless of the actual pickup date.*
- D. *Excavation equipment rental rates shall include standard buckets.*

### 3. ITEM SPECIFICATIONS

The construction equipment listed is a sampling only of equipment the City expects to rent over the term of this requirements contract(s). The actual needs of the City in terms of variety and usage may vary from that indicated in the sample listing.

#### ANNUAL

<u>EQUIPMENT DESCRIPTION</u>	<u>USAGE (HOURS)</u>
------------------------------	----------------------

- |   |     |
|---|-----|
| 1. <u>Mini excavators: interchangeable caterpillar or John Deere controls with quick release bucket &amp; thumb</u>           |     |
| • 8,000-10,000 lb operating weight with bucket  | 80  |
| • 10,000-12,000 lb operating weight with bucket   | 80  |
| Options/Attachments: rubber tracks, additional bucket, hydraulic plate compactor, hydraulic breaker                           |     |
| 2. <u>Excavators: interchangeable caterpillar or John Deere controls With quick release bucket &amp; thumb</u>                |     |
| • 25,000-30,000 lb operating weight   | 80  |
| • 30,000-35,000 lb operating weight   | 80  |
| • 35,000-40,000 lb operating weight   | 640 |
| • 40,000-45,000 lb operating weight   | 160 |
| • 45,000-55,000 lb operating weight   | 80  |
| • 55,000-65,000 lb operating weight   | 160 |
| • 65,000-80,000 lb operating weight   | 160 |
| Options/Attachments: compact radius clearance, additional bucket, rubber tracks, hydraulic plate compactor, hydraulic breaker |     |
| 3. <u>Skid Steer Loaders</u>  |     |
| • 40-50 horsepower  | 80  |
| • 50-60 horsepower  | 80  |
| • 60-70 horsepower  | 80  |
| • 70-80 horsepower  | 80  |
| • 80-90 horsepower  | 80  |
| Options: 4 in 1 bucket, auger, backhoe, dozer, pallet forks, planer, breaker  |     |
| 4. <u>Articulated wheel loaders</u>   |     |
| • 50-75 horsepower  | 80  |
| • 75-100 horsepower   | 80  |
| • 100-125 horsepower  | 80  |
| • 125-150 horsepower  | 80  |
| Options: 4 in 1 bucket, forks   |     |

**ANNUAL****EQUIPMENT DESCRIPTION(cont'd)****USAGE (HOURS)**5. Track loaders

- 50-70 horsepower 40
  - 70-80 horsepower 40
  - 80-90 horsepower 40
- Options: 4 in 1 bucket

6. Dozers

- 50-70 horsepower 40
- 70-80 horsepower 40
- 80-90 horsepower 40

7. Rubber tire backhoe

- 70-80 horsepower 80
- 80-90 horsepower 80
- 90-100 horsepower 80

Options/Attachments: 4x4, turbo, additional bucket,  
hydraulic plate compactor, hydraulic breaker

8. Double Drum Vibratory Roller

- 10 ton operating weight 160

ATTACHMENT "A"

# BID FORM PACKET

## ***RENTAL OF CONSTRUCTION RELATED EQUIPMENT REQUIREMENTS CONTRACT***

### **CERTIFICATION AND CONTRACT OFFER BID FORM(S)**

BID OPENING: JUNE 20, 2006 @ 2:00 PM

CITY OF BEAVERTON  
FINANCE CONFERENCE ROOM – 2<sup>ND</sup> FLOOR  
4755 SW GRIFFITH DRIVE  
BEAVERTON, OR 97005

#### **Bid Submittal Check List**

- ☐ Read all Special Instructions and Specifications
- ☐ Completely fill in all areas for Section(s) to be bid
- ☐ Complete and sign the Certification and Contract Offer, acknowledge addenda if applicable
- ☐ Attached copies of rental rates and delivery rate schedule
- ☐ Attached copy of bidder's contract form (if applicable)

**A COMPLETED BID FORM PACKET MUST  
BE SUBMITTED IN RESPONSE TO THIS BID.**

## CERTIFICATION AND CONTRACT OFFER

**BID TITLE: Rental of Construction Related Equipment, Requirements Contract**

**BID OPENING: June 20, 2006 @ 2:00 PM**

I the undersigned, having carefully examined the Instruction to Bidders and Specifications and all other related material and information, agree to furnish materials as specified to the City of Beaverton at the prices bid.

I further agree that this offer to furnish specified material will remain in effect at the prices bid for a period of not less than 60 calendar days from the date that bids are due, and that this offer may not be withdrawn or modified during that time.

If this offer, or portion thereof, is accepted by the Contract Review Board and award is made thereon, I agree to enter into a contract with City of Beaverton to furnish and install materials as specified for the prices bid.

I hereby certify that this bid is genuine and that I have not entered into collusion with any other vendor(s) or any other person(s).

Addendum No(s).\_\_\_\_\_ Acknowledged.

\*"Resident Bidder" \_\_\_\_\_ (Yes or No)

If awarded a contract pursuant to this solicitation, will you extend the terms, conditions and prices of such contract to other public agencies? \_\_ (Yes) \_\_\_\_ (No). If No \_\_\_\_\_

\_\_\_\_\_  
Signed By

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Telephone Number (Area Code)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Firm

\_\_\_\_\_  
Address

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Tax Identification/Social Security Number

\* "Resident Bidder" means a bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in the bid whether the bidder is a "resident bidder".



**CITY OF BEAVERTON**

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**BID FORM**

**BID TITLE: RENTAL OF CONSTRUCTION RELATED EQUIPMENT**

**BID OPENING: June 20, 2006 @ 2:00 PM**

**FIRM:** \_\_\_\_\_

**Vendor's Financial Terms (2%-10, NET-30, Etc.)** \_\_\_\_\_

**1. Submit listings of all available rental items with Daily, Weekly, and Monthly rates. Listing shall have a separate break out of Summer and Winter Rates**

- **If possible submit in electronic form as well as hard copy to [tdmuralt@ci.beaverton.or.us](mailto:tdmuralt@ci.beaverton.or.us).**

**2. Percentage off of the rates as listed in rental rate submittal: \_\_\_\_\_%**

**3. Delivery charge (*if applicable*): \_\_\_\_\_**

**4. Handling or other charges (*if applicable*): \_\_\_\_\_**

## **Exhibit "B"**

### Purchase Order Standard Terms and Conditions

**DEFINITIONS:** (i) "Contract" means the entire written agreement between the parties, including, but not limited to the Invitation to Bid or Request for Proposal and its specifications, terms, and conditions, solicitation instructions, solicitation addenda and contract amendments, if any, and the purchase order or price agreement document signed by the parties. (ii) "Contractor" means a person or organization with whom the City of Beaverton has contracted for the purchase of goods or goods and services. The terms "Contractor" and "Seller" as used in the Uniform Commercial Code (ORS chapter 72) are synonymous; "ORS" means the Oregon Revised Statutes; "OAR" means Oregon Administrative Rule. (iii) "City" means the City of Beaverton and is synonymous with "Buyer" as used in ORS chapter 12. "City" also means an ORCPP member if the purchase is being made under the State of Oregon's cooperative purchasing program authorized by ORS 190.240.

**STANDARD AND SPECIAL TERMS.** In addition to the terms and conditions contained herein, there may also be special terms and conditions in an Invitation to Bid or Request for Proposal, if one is issued, which apply to this contract.

**AMENDMENTS.** The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the City.

**INDEPENDENT CONTRACTOR STATUS.** This contract is not intended and nothing contained herein shall be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association between the City and Contractor, but is rather an agreement between independent parties, these being the City and the Contractor.

**WAIVER.** Failure of the City to enforce any provision of this contract shall not be a waiver or relinquishment by the City of its right to such performance in the future or of the right to enforce any other provisions of this contract.

**SEVERABILITY.** If any provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

**OWNERSHIP OF WORK PRODUCT.** All work products or any form of property originated or prepared by Contractor, which result from this contract, are the exclusive property of the City.

**GOVERNING LAW; JURISDICTION; VENUE.** This contract shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflict of laws, rules or doctrines. Any claim, action, suit, or proceeding between the City and the Contractor that arises from or relates to this contract shall be brought and conducted solely and exclusively within the Circuit Court of Washington County for the State of Oregon. Provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. Contractor hereby consents to the in personam jurisdiction of said courts.

**WORKERS' COMPENSATION.** Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126.

**FOREIGN CONTRACTOR.** If Contractor is not domiciled in or registered to do business in the State of Oregon and/or licensed to do business in the City of Beaverton, Contractor shall promptly provide to the Oregon Department of Revenue, the Secretary of State Corporation Division, and the Beaverton Finance Department all information required by those agencies relative to this contract. The City shall withhold final payment under this contract until Contractor has met this requirement.

**NON-RESIDENT ALIEN CONTRACTOR.** If Contractor is a non-resident alien, the required work authorization VISA code must be provided to City prior to the performance of any service under the contract. If the Contractor is unable to obtain the required work authorization VISA code, allowing Contractor to work and receive the compensation described in the contract, the contract shall be null and void. If a tax treaty exists between the United States and Contractor's country, and the Contractor wishes to be exempt from Federal tax withholding, the Contractor must file a Federal Internal Revenue Service Form 8233 with the City prior to the commencement of the contract.

**RESIDENT ALIEN CONTRACTOR.** If Contractor is a resident alien, the required evidence of both identity and employment eligibility must be provided to Buyer prior to the performance of any service under this contract. If the Contractor is unable to obtain or provide this evidence, the contract shall be null and void. Acceptable documentation to establish identity are driver's license or ID cards issued by federal, state or local government bearing a photograph. Acceptable documentation to establish employment authorization is an unexpired employment authorization document issued by the INS. Acceptable evidence of both identity and employment eligibility are: Alien Registration Receipt Card or Permanent Resident Card (INS Form I-551); foreign passport with a Temporary I-551 stamp; unexpired Employment Authorization Document issued by the INS which contains a photograph (Form I-776, Form I-688, Form I-688A, or Form I-688B); or in the case of a nonimmigrant alien, a foreign passport with an Arrival-Departure Record (Form I-94) bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, so long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Form I-94.

**HOLD HARMLESS.** Contractor shall indemnify, defend, and hold harmless the City and its officers, employees, agents, and members from all claims, suits, or actions of any nature arising out of or related to the activities of Contractor, its officers, subcontractors, agents or employees under this contract.

**COMPLIANCE WITH APPLICABLE LAW.** Contractor agrees to comply with all federal, state, county, and local laws, ordinances, and regulations applicable to work to be done under this Contract. The Contractor agrees to comply with all federal and state laws prohibiting discrimination on the basis

of race, sex, national origin, religion, age, or handicap, and the provisions of the American Disabilities Act, 42 U.S. Code 12100 et seq. Failure or neglect on the part of the Contractor to comply with any or all such laws, ordinances, rules, and regulations shall not relieve the Contractor of these obligations nor of the requirements of this contract.

**TAX COMPLIANCE CERTIFICATION.** Contractor hereby affirms, under penalty of perjury, as provided in ORS 305.385(6), that to the best of Contractor's knowledge, Contractor is not in violation of any of the tax laws described in ORS 305.380(4).

**DELIVERY.** All deliveries shall be F.O.B. destination with all transportation and handling charge paid by Contractor, unless specified otherwise in the solicitation documents. Responsibility and Liability for loss or damage shall remain with Contractor until final inspection and acceptance when responsibility shall pass to the City except as to latent defects fraud and Contractor's warranty obligations.

**INSPECTIONS.** Goods or goods and services furnished under this contract shall be subject to inspection and test by the City at times and place determined by the City. If the City finds goods or services furnished to be incomplete or not in compliance with solicitation specifications, the City may reject the goods or goods and services and require Contractor to either correct them without charge, or provide at a reduced price, whichever is equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the City, the City may reject the goods or services and cancel the contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the City's rights as buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

**YEAR 2000 COMPLIANCE NOTICE.** In the event Contractor learns or has reason to believe that City's computer hardware or software environment fails to use a date format that explicitly specifies century in any date data, Contractor shall promptly advise City of such failure.

**WARRANTIES.** Unless otherwise stated, all goods shall be new and current model and shall carry full manufacturer warranties. Contractor warrants all goods delivered to be free from defects in labor, material and manufacture and to be in compliance with solicitation specifications. All implied and expressed warranty provisions of the Uniform Commercial Code (ORS chapter 72) are incorporated in this contract. All warranties shall run to the City.

**PAYMENTS REQUIRED.** For all goods or goods and services provided under this contract, Contractor shall: (i) pay promptly, as due, all persons supplying labor or material; (ii) pay all contributions or amounts due the industrial accident insurance provider from the Contractor or any subcontractors; (iii) not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision therefore; and (iv) pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

**CITY PAYMENT OF CONTRACTOR CLAIMS.** If Contractor fails, neglects, or refuses to pay promptly, as due, any claim for labor or services furnished to the Contractor or any subcontractor by any person in connection with the goods, or services if applicable, provided under this contract, the City may pay such claim and charge the amount of the payment against funds due or to become due to the Contractor under this contract. The payment of a claim

by the City pursuant to this paragraph shall not relieve the Contractor or its surety, if any, from obligation with respect to any unpaid claims.

**CASH DISCOUNT.** If the City is entitled to a cash discount, the period of computation shall commence on the date the entire order is delivered, services complete, if applicable, or the date the invoice is received, whichever is later.

**PAYMENT.** Payment for completion of City contracts is normally made within 30 days following the date the entire order is delivered, services complete, if applicable, or the date the invoice is received, whichever is later. After 45 days, Contractor may assess overdue account charges up to a maximum rate of two-thirds of one percent per month (8% APR) on the outstanding balance (ORS 293.462).

**HOURS OF LABOR.** Contractor shall comply with the Oregon Bureau of Labor and Industries rules and applicable local ordinances and permit conditions as they pertain to hours of work.

**ASSIGNMENT/SUBCONTRACTS/SUCCESSORS.** Contractor shall not assign, sell, transfer, or subcontract rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the City. No such written approval shall relieve Contractor of any obligations of this contract, and any transferee or subcontractor shall be considered the agent of Contractor. Contractor shall remain liable to the City under the contract as if no such assignment, transfer, or subcontract had occurred. The provisions of this contract shall be binding upon and shall inure to the benefit of the parties to the contract and their respective successors and assigns.

**RECYCLABLE PRODUCTS.** Contractor shall use recyclable products to the maximum extent economically feasible in the performance of this contract. Contractor shall specify the minimum percentage of recycled product in the goods provided.

**SAFETY AND HEALTH REQUIREMENTS.** Goods or services provided under this contract shall comply with all Federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon Safety and Health requirements, including those of the State Workers' Compensation Division.

**MATERIAL SAFETY DATA SHEET.** In accordance with the OR-OSHA Hazard Communication Rules in OAR chapter 437, division 155, Contractor shall provide the State with a Material Safety Data Sheet for any goods provided under this contract which may release, or otherwise result in exposure to a hazardous chemical under normal conditions of use (OAR 437-155-005(2), 437-155-025). In addition, Contractor must label, tag, or mark such goods.

**ACCESS TO RECORDS.** The Contractor shall maintain all fiscal records relating to this contract in accordance with generally accepted accounting principles and shall maintain any other records relating to this contract in such a manner as to clearly document Contractor's performance hereunder. The City, State and Federal governments and their duly authorized representatives shall have access to such fiscal records and to all other books, documents, papers, plans and writing of Contractor that relate to this contract to perform examination, and audits and make excerpts and transcripts.

**BREACH OF CONTRACT.** Should Contractor breach any of the provisions of this contract, the City reserves the right to cancel this contract upon written notice to Contractor. Contractor shall be liable for any and all damages suffered by the City as the result of Contractor's breach of contract, including, but not limited to incidental and consequential damages, as provided in ORS 72.7110 to 72.7170. In the event of repeated breach of public and/or private contracts, Contractor shall be subject to disqualification on City contracts, as provided in City's local purchasing rules.

**FORCE MAJEURE.** Neither the City nor the Contractor shall be held responsible for delay or default caused by fire, riot, acts of god, **TERRORIST ACTS, OR OTHER ACTS OF POLITICAL SABOTAGE**, or war where such cause was beyond, respectively, the City or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligation under this contract.

**TERMINATION.** This contract may be terminated by mutual consent of both parties or by the City at its discretion. The City may cancel an order for goods or goods and services at any time with written notice to Contractor, stating the extent and effective date of termination. Upon receipt of this written notice, Contractor shall stop performance under this contract as directed by

the City. If this contract is so terminated, Contractor shall be paid in accordance with the terms of the contract for goods delivered or services rendered, and accepted, if Contractor's damages arising out of return of the goods cannot be mitigated by the resale as provided in the Uniform Commercial Code (ORS 72.7060).

**AVAILABILITY OF FUNDS.** City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract within its current appropriation or expenditure limitation, provided however, that continuation of the contract, or any extension, after the end of the fiscal period in which it is written, is contingent upon a new appropriation or limitation for each succeeding fiscal period for the purpose of this contract.

**TERMINATION DUE TO NONAPPROPRIATION OF FUNDS.** If sufficient funds are not provided in future legislatively approved budgets of City (or from applicable Federal, state, or other sources) to permit City in the exercise of its reasonable administrative discretion to continue this contract, or if City or program for which this contract was executed is abolished, the City may terminate this contract without further liability by giving Contractor not less than 30 days notice. In determining the availability of funds for this Contract, City may use the budget adopted for it by the City Council.